


MEMORANDUM

TO: Governing Board Members

FROM: Kenneth G. Ammon, P.E., Deputy Executive Director,
Everglades Restoration and Capital Projects 

DATE: October 29, 2009

SUBJECT: Pre-Partnership Credit Agreement for the North Palm Beach County –
Part 1 Project – Contract Number 4600001944

Background: Staff requests Governing Board approval to enter into a Pre-Partnership Credit Agreement with the U.S. Army Corps of Engineers (USACE), at no cost to the SFWMD, to establish eligibility to receive credit for the costs of construction-related work on the North Palm Beach County – Part 1 Project that has been or will be performed prior to Congressional authorization and execution of a Project Partnership Agreement.

The work proposed to be covered by this Pre-Partnership Credit Agreement includes:

- a. Construction of certain features of the North Palm Beach County Part 1 Project, including: the L-8 reservoir and associated infrastructure improvements (pump station, inflow structure and embankment fortifications); the G-161 water control structure; the G-160 water control structure; filling and plugging of ditches on the Nine-gems (Pal-Mar East) property; retrofitting of the Cypress Creek Canal culverts and construction to improve the berm along the eastern boundary of the Culpepper property; design, construction and testing of a sediment trap in the C-51 Canal upstream of the S-155 structure and sediment capping efforts within the Lake Worth Lagoon; and design and construction of the North Lake Boulevard Bridge
- b. Preparation of lands for project purposes, including removal of vegetation and control of exotics necessary to achieve project benefits (for habitat improvements and to facilitate flow), removal of trash, capping of and abandonment of wells, demolition of buildings and other structures including power distribution lines, and removal of septic tanks
- c. Investigations to determine the presence of cultural or historical resources
- d. Investigations to identify the existence and extent of hazardous substances; clean-up, for restoration purposes, of hazardous materials associated with the historic application of fertilizers or pesticides

- e. Monitoring, including the installation, maintenance and processing of monitoring devices to measure early project benefits

In Section 6004 of the Water Resources Development Act of 2007, Congress authorized the Assistant Secretary of the Army to provide credit for construction costs incurred by the SFWMD prior to signing a Project Partnership Agreement, if the construction is carried out in accordance with the terms and conditions of an agreement between the SFWMD and the Assistant Secretary of the Army. The USACE's implementation guidance for Section 6004 specifies that in order to maintain eligibility for credit, the SFWMD must execute a Pre-Partnership Credit Agreement with the Assistant Secretary of the Army prior to awarding the construction contract. The SFWMD and the USACE have developed a Pre-Partnership Credit Agreement covering SFWMD's construction on the North Palm Beach County – Part 1 Project and the USACE-Jacksonville District Engineer has been approved to sign this agreement.

This Pre-Partnership Credit Agreement does not provide credit, nor does it guarantee that credit will be provided at any time in the future. It merely establishes eligibility for future credit if the following occur:

1. The Assistant Secretary of the Army (Civil Works) makes a written determination that the Proposed Work is integral to the authorized project;
2. Congress authorizes construction of the project; and
3. The USACE determines that the SFWMD's Proposed Work costs are necessary, reasonable, allowable, allocable and auditable.

How this helps meet the District's 10-Year Strategic Plan: This agreement will establish eligibility for future credit toward the SFWMD's 50 percent cost-share on CERP, which is a major component of the Strategic Plan. If credited for this expenditure, it would reduce the SFWMD's future required contribution for the remainder of CERP.

Funding Source: No funding is needed for this action.

This Board item impacts what areas of the District, both resource areas and geography: Because this action influences credit toward the 50/50 cost-share for CERP, it has potential impact on the entire SFWMD. Staff from the Everglades Restoration and Capital Projects Resource Area will manage the contract.

What concerns could this Board item raise? By approving this Pre-Partnership Credit Agreement, the Governing Board will be agreeing that the SFWMD will not receive credit for the following out-of-pocket costs associated with real estate and construction for the North Palm Beach County Project: 1) the State's costs for management and maintenance of the lands prior to signing a Project Partnership Agreement; and 2) the SFWMD's costs of remediating soils contaminated with hazardous agricultural chemicals unless otherwise provided for in the Project Partnership Agreement. However, a recently approved policy decision by the USACE allowing lands to be credited based on the fair market value at the time of certifying the lands to the USACE for the project is expected to provide the SFWMD with significantly

greater credit for the lands, which would help to offset the non-credited costs described above.

Why should the Governing Board approve this item? If SFWMD does not sign this Agreement, it will not be eligible to receive credit for the costs of performing the work on this project.

Attachment – Resolution
KGA/pw